

**Emergency Restraints upon Further Development in the Meadowlands District,
Instituted by the New Jersey Meadowlands Commission**

Adopted by the NJMC at the 9/19/07 Commission Meeting

I. Intent and Purpose

In a decision issued May 21, 2007, the Appellate Division affirmed that the New Jersey Meadowlands Commission (NJMC) is authorized to affirmatively plan for affordable housing in the Meadowlands District. IMO Adoption of N.J.A.C. 19:3, 393 N.J. Super. 173 (App.Div.2007). The Commission will address these planning issues promptly following publication of amended Third Round rules by the Council on Affordable Housing (COAH) Id. at 179; see also, IMO Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App Div.) Certif. denied, N.J. (2007). The Appellate Division further directed the NJMC to consider whether, and if so, to what extent, further development in the District should be avoided pending adoption of the new zoning rules. 393 N.J. Super. at 184.

The NJMC has determined that immediate restraints on further development in the Meadowlands District, as described herein, are necessary, because continued non-inclusionary development will substantially and adversely impact existing opportunities for lower income housing within the District.

In NJMC Resolution No. 07-68 adopted at its July 25, 2007 meeting, the NJMC directed its staff to prepare guidelines that will govern the review of and restraints upon applications for development in the District. The NJMC has directed that these guidelines be implemented as soon as practicable.

The guidelines that appear herein shall apply to all zoning certificate applications received on or after May 21, 2007 (the date of the relevant decision) and shall remain in effect until the NJMC's new zoning regulations governing affordable housing become effective or these guidelines are withdrawn or rescinded by Commission action or court order, whichever shall occur first.

II. NJMC Guidelines for Period of Emergency Restraints

- (a) Compliance with these guidelines and all pertinent COAH requirements shall be a condition of any zoning certificate issued by NJMC with respect to applications filed with the NJMC pursuant to N.J.A.C. 19:4-4.2, on or after May 21, 2007.
- (b) The NJMC shall not issue a certificate of completion and/or occupancy certification unless the proposed project complies with these guidelines.
- (c) These guidelines shall constitute the controlling instrument with respect to development in the District.

(d) Zoning certificate applications for the following are exempt from these guidelines:

1. Development limited to one or two market-rate dwelling units;
2. Development by municipal, county, state, and federal government; and utilities, housing and improvement authorities;
3. Signs, fences, site improvements, tanks, antennae, communications transmission towers, recycling and/or refuse areas, compactor pads, and external mechanical equipment; and
4. Change in use within an existing structure, provided that the aforementioned change does not increase the occupancy load by 25 or more people.

(e) A team of three (3) NJMC staff members, one of whom shall be a licensed professional planner and one of whom shall be a licensed professional engineer ("Review Team") shall review each application for a zoning certificate and prepare a recommendation regarding the suitability of the subject property for affordable housing. The recommendation shall be forwarded to the Commission for final action.

1. A site shall be deemed unsuitable for affordable housing if it is located within one of the following zones:
 - i. Environmental Conservation;
 - ii. Parks and Recreation;
 - iii. Aviation Facilities; or
 - iv. Public Utilities.
2. A site located within the following zones is generally deemed unsuitable for housing. However, a property owner may request that the Review Team evaluate the suitability of a particular site based on specific site characteristics, including size, location, surrounding land uses, environmental factors, and access to appropriate streets and adequate infrastructure:
 - i. Light Industrial B;
 - ii. Intermodal A;
 - iii. Intermodal B; or
 - iv. Heavy Industrial.
3. A site shall be deemed unsuitable for affordable housing pursuant to any of the following:
 - i. The parcel contains less than 7,500 square feet of buildable land;

- ii. Former and existing land uses, either on the site or in the vicinity, may expose residents to environmental hazard, unless the site is remediated to NJDEP residential standards;
 - iii. The size, shape, or layout of any existing structures, or other physical limitation(s) not listed previously, precludes residential use;
 - iv. The site does not meet applicable COAH site suitability requirements at N.J.A.C. 5:94-1.4 and 4.5; or
 - v. The site is unsuitable for residential use pursuant to sound planning principles.
- (f) The development of any site determined to be suitable for affordable housing shall be halted until new NJMC zoning regulations governing affordable housing become effective. Exceptions shall be made with respect to development described in Paragraphs (g) and (h) below.
- (g) The Review Team shall permit applications for residential development to proceed in accordance with N.J.A.C. 19:4-4 where a minimum of 20 percent of the units are designated as affordable housing.
- 1. The development may include accessory uses intended to contribute to the comfort, convenience, or necessity of residents. These accessory uses may result in an increased affordable housing obligation.
 - 2. The NJMC acknowledges the need for municipalities to provide balanced affordable housing opportunities for families with children and older householders. Therefore, to promote a balance, development with age-restricted affordable housing may be halted if the Review Team determines that such development will result in the creation of affordable age-restricted units in excess of 25 percent of the municipality's growth share obligation, calculated in accordance with N.J.A.C. 5:94-2.
- (h) Applications for non-residential development on sites the Review Team deems unsuitable for affordable housing pursuant to Paragraph (e) shall proceed in accordance with the procedures in N.J.A.C. 19:4-4 as long as the applicant provides for affordable housing elsewhere within the municipality subject to the following formula:
- 1. One affordable housing unit shall be provided for every 25 new jobs created, pursuant to the standards published by COAH as N.J.A.C. 5:94, Appendix E.

2. When these calculations result in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place to facilitate that calculation of a payment in lieu of construction.
 3. The NJMC reserves the right to promulgate rules to achieve consistency when COAH adopts amendments to its third round rules.
- (i) The applicant shall address the affordable housing requirement calculated in Paragraph (h) through one or a combination of the following methods:
1. Construction of affordable housing units elsewhere within the subject municipality. A written agreement between the developer and the municipality for the construction of affordable units elsewhere within the municipality shall be provided to the Review Team prior to issuance of any zoning certificate.
 2. A payment in lieu of construction to the Commission, which shall be determined and collected as follows:
 - i. The payment shall be calculated in accordance with the per-unit rates provided in Table 1 below.

TABLE 1

Payments in Lieu of Construction	
<u>Municipality</u>	<u>Per Unit Amount</u>
Carlstadt	\$147,072
East Rutherford	\$141,433
Jersey City	\$140,690
Kearny	\$142,887
Little Ferry	\$142,186
Lyndhurst	\$144,924
Moonachie	\$146,008
North Arlington	\$144,268
North Bergen	\$142,867
Ridgefield	\$153,596
Rutherford	\$145,328
Secaucus	\$144,128
South Hackensack	\$143,178
Teterboro	\$143,255

- ii. When the calculation results in a fraction of a unit, that figure shall be rounded to the nearest hundredth decimal place and multiplied by the per-unit payment rate.
 - iii. The submission of such payment to the NJMC shall be a condition of any zoning certificate.
 - iv. The NJMC shall not issue a certificate of completion or occupancy certification for the development that generated the affordable housing requirement until such payment is received in full or until a guaranteed payment plan is effectuated.
- 3. In a municipality that has an adopted growth share ordinance, a payment in lieu of construction fee shall be calculated and collected by the municipality, and not by the Commission. Proof of payment to the municipality shall be submitted to the NJMC prior to the issuance of any certificate of completion or occupancy certification.
- (j) The entire development shall be subject to the bulk requirements of the zone in which it is to be constructed unless altered by the NJMC pursuant to these guidelines.
- (k) The maximum permitted residential density in any zone that does not provide a density for housing shall be 30 dwelling units per acre. An increase in this density will be considered by the NJMC subject to the submittal by the applicant of a planning report prepared by a NJ-licensed professional planner. The planning report shall be reviewed by the Review Team and a recommendation shall be made to the Commission.
- (l) A rental bonus of three dwelling units per acre shall be permitted for every 25 affordable units reserved for renter households, exclusive of any density permitted in accordance with Paragraph (k).
- (m) The minimum parking requirement for affordable units shall be one space for each affordable unit. In multiple family dwelling developments, affordable units shall not be required to provide visitor parking.
- (n) The administration of affordable housing units provided in accordance with these guidelines shall conform to the requirements of COAH's substantive rules, N.J.A.C. 5:94 and the New Jersey Housing and Mortgage Finance Agency (HMFA)'s Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, as amended and supplemented.
- 1. These provisions include, but are not limited to, requirements regarding phasing of units, controls on affordability, proportion of units allocated to persons of

low- or moderate-income, heating sources, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.

2. The municipality shall be responsible for such administration, and may designate a COAH-approved entity to administer the affordable units for the duration of the required administration period.
 - i. The cost and expense of such administration may be imposed upon the developer pursuant to the terms and conditions of a duly adopted municipal ordinance.
 - ii. The entity shall assume the responsibilities of the administrative agent set forth by HMFA in N.J.A.C. 5:80-26.
 - iii. The municipality may request the NJMC to serve as the administrative agent.
 - iv. Funds from the sale of affordable units with extinguished affordability controls shall be deposited into the municipality's escrow account established in accordance with Paragraph (o).
- (o) All payments in lieu of constructing affordable housing units on site and funds from units with extinguished controls, collected by the NJMC in accordance with these guidelines, shall be deposited in an interest-bearing escrow account established by NJMC for the municipality in which the units would have been constructed.
1. The escrow accounts shall be created pursuant to the terms of a three-party escrow agreement between each constituent municipality, the financial institution, and the NJMC.
 2. The NJMC shall include in future rulemaking provisions regarding the release of these funds to a municipality for the purpose of creating affordable housing.

III. Notice Requirements

- (a) The NJMC staff shall post, on the NJMC website at www.njmeadowlands.gov, a list of all applications received on or after January 1, 2007.
- (b) All recommendations regarding site suitability shall be brought before the Commission and shall be subject to the same public notice requirements as any Commission agenda item.
- (c) The NJMC staff shall notify a municipality of any zoning certificate application that will affect that municipality under these guidelines.

IV. Appeals

Property owners who believe that the NJMC's application of these guidelines to a proposed development or specific property adversely affects them may file an appeal as provided by NJMC regulations. See N.J.A.C. 19:4-4.19.